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09/936,638	12/12/2002	Helmut Fennel	10543-032	8722

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EXAMINER

JACKSON, ANDRE K

ART UNIT	PAPER NUMBER
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2856

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/936,638

Applicant(s)

FENNEL ET AL.

Examiner

André K. Jackson

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6 and 7 is/are allowed.
- 6) ☒ Claim(s) 1,3-5 and 11 is/are rejected.
- 7) ☒ Claim(s) 2 and 8-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: switching valves are not recited in the specification. Applicants seem to be confused about the objection to the specification. In short, the Examiner is asking for consistency between the claims and the specification more specifically with the term "switching valves". The Examiner has no interest in the part of speech (adverb; verb) the term is associated with the Examiner only needs the Applicants to have the specification mirror the claims in terminology. If there is a term that is used in the specification for "switching valve" then it should be used in the claims. The Examiner has not found the recitation "switching valve" anywhere in the specification. If this is not true the Applicants should point this out in the next response. The Applicants have requested that in the future the Examiner request a telephonic interview to avoid "piecemeal examination". However, the Examiner considered this objection to be minor and the objection did not warrant an interview, but if there is still a need to discuss the matter the Examiner is willing contact the Applicants at their earliest convenience.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Führer.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claim 1, Führer discloses in the patent entitled "Circuit arrangement for the brake system of a motor vehicle" determining the viscosity of a brake fluid as it is affected by temperature of a vehicle brake circuit and a predetermined pressure build-up within time limits having the

steps of generating a pressure build-up within time limits in at least one defined section of the brake circuit; detecting in at least one section of the brake circuit a pressure in the section and measuring at least one of a magnitude of the pressure or a time required for build up the pressure and relating the magnitude of the pressure or time to the viscosity (Abstract, Columns 2,4).

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kahl et al.

Regarding claim 1, Kahl et al. disclose in the patent entitled "Method and device for brake pressure adjustment" generating a pressure build-up within time limits in at least one defined section of the brake circuit; determining the viscosity of a brake fluid as it is affected by temperature of a vehicle brake circuit (Columns 1,2). It is well known that the temperature changes the viscosity of the fluid. Kahl et al. disclose that the fluid is both warm and cold from Figure 3, which shows how the viscosity is related to both the time and a predetermined pressure (Columns 1,2).

6. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cornell et al. in view of Kahl et al.

Regarding claim 1, Cornell et al. disclose in the patent entitled "Duration control strategy for a hydraulically actuated engine compression release brake" determining the viscosity of a brake fluid as it is affected by temperature of a vehicle brake circuit (Column 3, lines 66-67-Column 4). Cornell et al. do not explicitly disclose generating a pressure build-up within time limits in at least one defined section of the brake circuit and a predetermined pressure build-up within time limits having the steps of detecting in at least one section of the brake circuit a pressure in the section and measuring at least one of a magnitude of the pressure or a time required for build up the pressure and relating the magnitude of the pressure or time to the viscosity. However, Kahl et al. disclose generating a pressure build-up within time limits in at least one defined section of the brake circuit; a predetermined pressure build-up within time limits having the steps of detecting in at least one section of the brake circuit a pressure in the section and measuring at least one of a magnitude of the pressure or a time required for build up the pressure and relating the magnitude of the pressure or time to the viscosity (Figure 3, Columns 1,2). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Cornell et al. to include a predetermined pressure build-up within time limits having the steps of detecting in at least

one section of the brake circuit a pressure in the section and measuring at least one of a magnitude of the pressure or a time required for build up the pressure and relating the magnitude of the pressure or time to the viscosity. By adding this feature the artisan would be able to determine the pressure as related to the viscosity and generate the critical pressure difference across the inlet valve.

7. Claims 1,3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oyama.

Regarding claim 1, Oyama disclose in the patent entitled "Method of detecting temperature of brake fluid and method of controlling brake fluid pressure" determining the viscosity of a brake fluid as it is affected by temperature of a vehicle brake circuit (Column 4); a predetermined pressure build-up within time limits (Figures 5,6) having the steps of detecting in at least one section of the brake circuit a pressure in the section and measuring at least one of a magnitude of the pressure or a time required for build up the pressure and relating the magnitude of the pressure or time to the viscosity (Columns 3-4, Figures 5,6,9,10). Oyama does not disclose generating a pressure build-up within time limits in at least one defined section of the brake circuit. However, Seibert et al discloses in the patent entitled "Anti-lock hydraulic brake system" generating a pressure build-up within time limits in at least one defined section of the brake circuit (Column 5, lines 23-68-Column 6, lines 18-26).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Oyama to include generating a pressure build-up within time limits in at least one defined section of the brake circuit. By adding this feature the apparatus would be able to accurately control the operation of the system. Oyama makes it clear that the viscosity is estimated and not precisely know; however, estimation is a determination relative to the subject matter.

Regarding claim 3, Oyama discloses where the maximum magnitude of the pressure is determined (Figures 5, 6).

Regarding claim 4, Oyama discloses where the magnitude of the pressure variation is determined as a function of time (Figures 5, 6).

Regarding claim 11, Oyama does not disclose generating a pressure build-up within time limits for a predetermined period of time. However, Seibert et al. disclose generating a pressure build-up within time limits in at least one defined section of the brake circuit (Column 5, lines 23-68-Column 6, lines 18-26). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Oyama to include generating a pressure build-up within time limits in at least one defined section of the brake circuit. By adding this feature the apparatus would be able to accurately control the operation of the system.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oyama in view of Reinartz et al.

Regarding claim 5, Oyama does not disclose where one of the magnitude or time of the pressure is determined after activation of a pump of the brake circuit delivering the brake fluid or after opening of a valve of the brake circuit. However, Reinartz et al. disclose where the magnitude or time of the pressure is determined after activation of a pump of the brake circuit delivering the brake fluid or after opening of a valve of the brake circuit (Columns 1 and 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Oyama to include where the magnitude or time of the pressure is determined after activation of a pump of the brake circuit delivering the brake fluid or after opening of a valve of the brake circuit since this modification would increase the performance of the braking system.

9. Claims 2,8,9 and 10 are objected to as being dependent upon a rejected base claim.
10. Claim 6 and 7 are allowed.

Response to Arguments

11. Applicant's arguments filed 06/21/04 have been fully considered but they are not persuasive. Applicants have argued that the Führer, Kahl and Cornell references are not available as prior art. However, while those priority documents supplied by the Applicants are available in the file those priority documents are not translated into English. Therefore, there

is no way to determine if the subject matter in the foreign application is the same subject matter of the present application. The priority dates are not considered.

In response to Applicants argument that Oyama does not disclose a predetermined pressure build up within limits. Oyama depicts in Figures 5 and 6 how long it takes for the actual pressure to reach the target pressure (Column 3, lines 14-16). Hence, a predetermined pressure builds up within limits.

12. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to André K. Jackson whose telephone number is (571) 272-2196. The examiner can normally be reached on Mon.-Thurs. 7AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A.J.

September 3, 2004


HEZRON WILLIAMS
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